

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2005-1752-MSW-E TCEQ ID: RN104442256 CASE NO.: 27026

RESPONDENT NAME: MORGAN MICHAEL AND DEVEN MICHAEL DBA M & M TIRE

ORDER TYPE:

<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 2616 Highway 62 North in Orange, Orange County

TYPE OF OPERATION: Tire shop

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on October 22, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846

Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Ms. Elvia Maske, Waste Enforcement Section, MC 149, (512) 239-0789

TCEQ Regional Contact: Mr. Keith Anderson, Beaumont Regional Office, MC R-10, (409) 898-3838

Respondent: Mrs. Deven Michael and Mr. Morgan Michael, M & M Tire, 2616 Highway 62 North, Orange, Texas 77632

Respondent's Attorney: Not represented by counsel on this enforcement matter.

RESPONDENT NAME: MORGAN MICHAEL AND DEVEN
MICHAEL DBA M & M TIRE
DOCKET NO.: 2005-1752-MSW-E

Page 2 of 2

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint</p> <p><input type="checkbox"/> Routine</p> <p><input checked="" type="checkbox"/> Enforcement Follow-up</p> <p><input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: August 3, 2005</p> <p>Date of NOE/NOV Relating to this Case: September 4, 2005 (NOE) November 3, 2005 (NOE)</p> <p>Background Facts:</p> <p>An EDPRP was filed on April 6, 2006. The Respondents signed an Agreed Order on November 29, 2007.</p> <p>The Respondents in this case do not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>MSW</p> <p>1. Failed to obtain a registration as a scrap tire generator and storage site while storing in excess of 500 used or scrap tires on the ground. Specifically, during the investigation there were an estimated 3,000 tires on the ground [30 TEX. ADMIN. CODE § 328.56(a)(1) and (d)(2); and 328.60(a)].</p> <p>2. Failed to monitor for vectors and apply the appropriate vector control measures every two weeks [30 TEX. ADMIN. CODE § 328.56(d)(4)].</p>	<p>Initial Calculated Penalty: \$7,875</p> <p>Total Deferred: \$4,275</p> <p><input type="checkbox"/> Expedited Settlement</p> <p><input checked="" type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid/Due to General Revenue: \$100/\$3,500</p> <p>The Respondents have paid \$100 of the administrative penalty. The remaining amount of \$3,500 shall be payable in 35 monthly payments of \$100 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions</p> <p>The Respondents shall undertake the following technical requirements:</p> <p>1. Within 10 days, begin monitoring the tires stored outside for vectors and utilize appropriate vector-control measures at least once every two weeks.</p> <p>2. Within 60 days, reduce the quantity of scrap tires at the Facility to less than 500 or obtain a scrap tire storage site registration.</p> <p>3. Within 76 days, submit written, notarized certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with these ordering provisions.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

TCEQ

DATES Assigned 06-Sep-2005
PCW 02-Jan-2006 Screening 13-Sep-2005 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Deven Michael and Morgan Michael dba M & M Tire
Reg. Ent. Ref. No. RN104442256
Facility/Site Region 10-Beaumont < Major/Minor Source Major Source <

CASE INFORMATION

Enf./Case ID No. 27026 No. of Violations 2
Docket No. 2005-1752-MSW-E Order Type 1660
Media Program(s) Waste Tires < Enf. Coordinator Elvia Maske
Multi-Media EC's Team Enforcement Team 5 <
Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$7,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement Subtotals 2, 3, & 7 \$375

Notes An enhancement is recommended because the Respondent has received one NOV for same violation.

Culpability No < 0% Enhancement Subtotal 4 \$0

Notes Does not meet culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes Respondent is not yet in compliance.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$260
Approx. Cost of Compliance	\$3,200

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$7,875

OTHER FACTORS AS JUSTICE MAY REQUIRE

0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only: e.g. -30 for -30%.)

Notes

Final Penalty Amount \$7,875

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$7,875

DEFERRAL

0% Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage (Enter number only: e.g. 20 for 20% reduction.)

Notes

No deferral is recommended because the settlement deadline has expired.

PAYABLE PENALTY

\$7,875

Screening Date 13-Sep-2005

Michael.wb3

Docket No. 2005-1752-MSW-E

PCW

Respondent Deven Michael and Morgan Michael dba M & M Tire

Policy Revision 2 September 2002

Case ID No. 27026

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104442256

Media [Statute] Waste Tires

Enf. Coordinator Elvia Maske

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
Orders	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Please Enter Yes or No

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes An enhancement is recommended because the Respondent has received one NOV for same violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 13-Sep-2005

Docket No. 2005-1752-MSW-E

PCW

Respondent Deven Michael and Morgan Michael dba M & M Tire

Policy Revision 2 (September 2005)

Case ID No. 27026

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104442256

Media [Statute] Waste Tires

Enf. Coordinator Elvia Maske

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code §§ 328.56(a)(1) and (d)(2), and 328.60(a)

Secondary Rule Cite(s)

Violation Description Failure to obtain a registration as a scrap tire generator and storage site while storing in excess of 500 used or scrap tires on the ground. During an investigation on August 3, 2005, there were an estimated 3,000 scrap tires on-site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			Percent
Release		Major	Moderate	Minor	
OR	Actual				
	Potential				

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	Percent
			X			

Matrix Notes Failure to comply with 100% of the rule requirement.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 2

man only one use a small	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Two monthly events are recommended from the date the violation was documented during the August 3, 2005 investigation to the date of screening (September 13, 2005).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$252

Violation Final Penalty Total \$5,250

This violation Final Assessed Penalty (adjusted for limits) \$5,250

Economic Benefit Worksheet

Respondent Deven Michael and Morgan Michael dba M & M Tire
Case ID No. 27026
Reg. Ent. Reference No. RN104442256
Media [Statute] Waste Tires
Violation No. 1

Percent Interest 5.0
Years of Depreciation 15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$3,000	26-Oct-2004	30-Jun-2006	1.7	\$252	n/a	\$252
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Estimated cost to properly remove and dispose of used/scrap tires to an authorized site, or
Notes for DELAYED costs obtain registration; however, Respondent provided notification that they do not plan to process or store tires.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)				
Disposal	0.0	\$0	\$0	\$0	\$0
Personnel	0.0	\$0	\$0	\$0	\$0
Inspection/Reporting/Sampling	0.0	\$0	\$0	\$0	\$0
Supplies/equipment	0.0	\$0	\$0	\$0	\$0
Financial Assurance [2]	0.0	\$0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	0.0	\$0	\$0	\$0	\$0
Other (as needed)	0.0	\$0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

TOTAL

Screening Date 13-Sep-2005

Docket No. 2005-1752-MSW-E

PCW

Respondent Deven Michael and Morgan Michael dba M & M Tire

Enforcement Department 2005

Case ID No. 27026

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104442256

Media [Statute] Wasie Tires

Enf. Coordinator Elvia Maske

Violation Number 2

Primary Rule Cite(s)

30 Tex. Admin. Code § 328.56(d)(4)

Secondary Rule Cite(s)

Violation Description

Failed to monitor for vectors and apply the appropriate vector control measures every two weeks.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			Percent
Release		Major	Moderate	Minor	
OR	Actual				
	Potential		X		25%

>> Programmatic Matrix

		Falsification			Percent
		Major	Moderate	Minor	
Matrix Notes					

Mosquitoes and other vectors hatching in standing water or wet areas from tire storage sites could cause potential harm to human health and the environment by spreading disease when not controlled. As a result of this violation, human health or the environment could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

Note: only one use or small	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from documentation of the violation during the August 3, 2005 investigation to the date of screening (September 13, 2005).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Deven Michael and Morgan Michael dba M & M Tire
Case ID No. 27026
Reg. Ent. Reference No. RN104442256
Media [Statute] Waste Tires
Violation No. 2

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Percent Interest	Years of Depreciation	EB Amount
						5.0	15	
Delayed Costs								
Equipment				0.0	\$0			\$0
Buildings				0.0	\$0			\$0
Other (as needed)				0.0	\$0			\$0
Engineering/construction				0.0	\$0			\$0
Land				0.0	\$0	n/a		\$0
Record Keeping System				0.0	\$0	n/a		\$0
Training/Sampling				0.0	\$0	n/a		\$0
Remediation/Disposal				0.0	\$0	n/a		\$0
Permit Costs				0.0	\$0	n/a		\$0
Other (as needed)	\$200	03-Aug-2005	31-May-2006	0.8	\$8	n/a		\$8

Notes for DELAYED costs

Estimated monitor, treat and control vectors every two weeks.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0			\$0
Personnel				0.0	\$0			\$0
Inspection/Reporting/Sampling				0.0	\$0			\$0
Supplies/equipment				0.0	\$0			\$0
Financial Assurance [2]				0.0	\$0			\$0
ONE-TIME avoided costs [3]				0.0	\$0			\$0
Other (as needed)				0.0	\$0			\$0

Notes for AVOIDED costs

Approx. Cost of Compliance TOTAL

Compliance History

Customer/Respondent/Owner-Operator: CN602619454 MICHAEL, DEVEN Classification: AVERAGE Rating: 3.330

Regulated Entity: RN104442256 M & MTIRE Classification: AVERAGE Site Rating: 3.33

Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455100049

Location: 2616 HIGHWAY 62 N, ORANGE, TX, 77632 Rating Date: 9/1/05 Repeat Violator: NO

SEQ Region: REGION 10 - BEAUMONT

Site Compliance History Prepared: October 10, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 09, 2000 to September 09, 2005

SEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
 Name: Elvia Maske Phone: (512)239-0789

Site Compliance History Components

Has the site been in existence and/or operation for the full five year compliance period? Yes

Has there been a (known) change in ownership of the site during the compliance period? No

If Yes, who is the current owner? N/A

If Yes, who was/were the prior owner(s)? N/A

When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site:

Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

Any criminal convictions of the state of Texas and the federal government.

N/A

Chronic excessive emissions events.

N/A

The approval dates of investigations. (CCEDS Inv. Track. No.)

12/17/2004 (339521)

08/30/2005 (403182)

Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 12/17/2004 (339521)

Self Report? NO

Citation:

30 TAC Chapter 111, SubChapter B 111.201

Classification: Moderate

Description: Failure to comply with the outdoor burning rules.

Self Report? NO

Citation:

30 TAC Chapter 324, SubChapter A 324.6

Classification: Moderate

40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22[G]

Description: Failure to abate spills of used oil and properly label used oil tank.

Self Report? NO

Citation:

30 TAC Chapter 328, SubChapter F 328.56[G]

Classification: Moderate

Description: Failure to comply with generator requirements for scrap tires.

Self Report? NO

Citation:

30 TAC Chapter 328, SubChapter F 328.59[G]

Classification: Minor

30 TAC Chapter 328, SubChapter F 328.60[G]

Description: Failure to register as a scrap tire storage and processing facility.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MORGAN MICHAEL AND DEVEN
MICHAEL DBA M & M TIRE
RN104442256

§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2005-1752-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Morgan Michael and Deven Michael dba M& M Tire ("Mr. and Mrs. Michael") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. and Mrs. Michael, appear before the Commission and together stipulate that:

1. Mr. and Mrs. Michael own and operate a tire shop located at 2616 Highway 62 North in Orange, Orange County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361; and TCEQ rules.
3. The Commission and Mr. and Mrs. Michael agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. and Mrs. Michael is subject to the Commission's jurisdiction.
4. Mr. and Mrs. Michael received notice of the violations alleged in Section II ("Allegations") on or about September 4, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. and Mrs. Michael of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of seven thousand eight hundred seventy-five dollars (\$7,875.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Mr. and Mrs. Michael and determined that Mr. and Mrs. Michael are unable to pay part of the administrative penalty. Therefore, four thousand two hundred seventy-five dollars (\$4,275.00) of the penalty is deferred contingent upon Mr. and Mrs. Michael's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. and Mrs. Michael fail to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. and Mrs. Michael to pay all or part of the deferred penalty.
7. Mr. and Mrs. Michael have paid one hundred dollars (\$100.00) of the undeferred administrative penalty. The remaining amount of three thousand five hundred dollars (\$3,500.00) shall be payable in 35 monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. and Mrs. Michael fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the acceleration of any remaining balance constitutes the failure by Mr. and Mrs. Michael to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of any deferred penalty amount.
8. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
9. The Executive Director of the TCEQ and Mr. and Mrs. Michael have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
10. Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. and Mrs. Michael have not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. Mr. and Mrs. Michael are alleged to have violated:
 - a. 30 TEX. ADMIN. CODE § 328.56(a)(1) and (d)(2), and 328.60(a), by failing to obtain a registration as a scrap tire generator and storage site while storing in excess of 500 used or scrap tires on the ground, as documented on August 3, 2005. Specifically, during the investigation there were an estimated 3,000 tires on the ground.
 - b. 30 TEX. ADMIN. CODE § 328.56(d)(4), by failing to monitor for vectors and apply the appropriate vector control measures every two weeks, as documented during an investigation conducted on August 3, 2005.

III. DENIALS

Mr. and Mrs. Michael generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. and Mrs. Michael pay an administrative penalty as set forth in Section I, Paragraph 6 and 7, above. The payment of this administrative penalty and Mr. and Mrs. Michael's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Morgan Michael and Deven Michael dba M & M Tire, Docket No. 2005-1752-MSW" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. and Mrs. Michael shall undertake the following technical requirements:

- a. Within 10 days after the effective date of the Agreed Order, Mr. and Mrs. Michael shall begin monitoring the tires stored outside for vectors and utilize appropriate vector control measures at least once every two weeks, in accordance with 30 TEX. ADMIN CODE § 328.56(d)(4).
- b. Within 60 days after the effective date of the Agreed Order, Mr. and Mrs. Michael shall reduce the quantity of scrap tires at the Facility to less than 500 or obtain a scrap tire storage site registration, in accordance with 30 TEX. ADMIN CODE § 328.60.
- c. Within 76 days after the effective date of this Order, Mr. and Mrs. Michael shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with ordering provision Nos. 2.a. through 2.b.. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mr. and Mrs. Michael shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

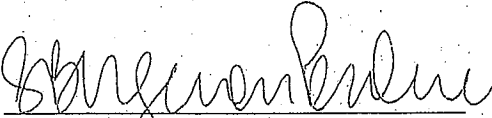
Keith Anderson, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Fwy
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. and Mrs. Michael. Mr. and Mrs. Michael are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
 4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. and Mrs. Michael shall be made in writing to the Executive Director. Extensions are not effective until Mr. and Mrs. Michael receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
 5. This Agreed Order, issued by the Commission, shall not be admissible against Mr. and Mrs. Michael in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
 6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
 7. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. and Mrs. Michael, or three days after the date on which the Commission mails notice of the Order to Mr. and Mrs. Michael, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.
-

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

11/30/07

Date

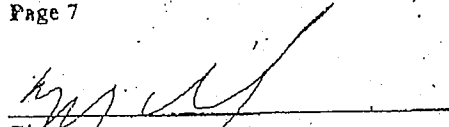
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution

Morgan Michael and Deven Michael dba M & M Tire
DOCKET NO. 2005-1752-MSW-E
Page 7


Signature

Morgan Michael

Name (Printed or typed)

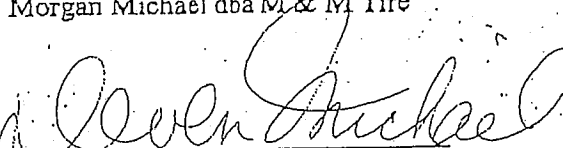
Authorized representative of

Morgan Michael dba M & M Tire

11/29/07
Date

Owner

Title


Signature

Deven Michael

Name (Printed or typed)

Authorized representative of

Deven Michael dba M & M Tire

11/29/07
Date

Owner

Title